

IN THE COUNTY COURT OF THE 13th
JUDICIAL CIRCUIT, IN AND FOR
HILLSBOROUGH COUNTY,
FLORIDA
CASE NO: 18-CC-042484

SUNITA ROBERTS,

Plaintiff,

v.

DIRECT GENERAL INSURANCE COMPANY,

Defendant.

**ORDER ON PLAINTIFF'S MOTION FOR RECONSIDERATION AND/OR
REHEARING**

THIS CAUSE having come before the Court on June 23, 2020, upon Plaintiff, Sunita Roberts, Motion for Reconsideration and/or Rehearing of the Court's grant of Summary Judgment for Defendant, Direct General Insurance Company, and the Court having reviewed the motion, the entire Court file, the case law presented, having heard argument of counsel, having made a thorough review of the matters filed of record, and being otherwise advised in the premises, the Court finds as follows:

Plaintiff's Motion is Denied.

FACTUAL BACKGROUND

The Court previously granted Defendant's Motion for Summary Judgment on the issue of the rescission of a contract of automobile insurance for Plaintiff's failure to disclose her brother, which caused a material misrepresentation. The Court found that Plaintiff failed to disclose her brother in the section of the application of insurance titled "DRIVER INFORMATION" as a person aged 14 and older residing with the Applicant, and that this failure to disclose was material, as established in the deposition testimony of Defendant's Corporate Representative. The Court also found that Insurer's request for such information on the application was unambiguous, and that the Corporate Representative satisfied the business records exception, and so properly testified as to the materiality of said failure. Consequently, the Court granted Defendant's Motion for Summary Judgment on the issue of whether Defendant properly rescinded the contract of insurance. The Court also denied Plaintiff's Motion for Summary Judgment that alleged Defendant improperly rescinded the contract of insurance.

PLAINTIFF'S MOTION FOR RECONSIDERATION AND/OR REHEARING

Plaintiff's Claims of Ambiguity in the Application

Plaintiff, in part, argued as grounds for rehearing that the application section titled "DRIVER INFORMATION" is ambiguous. Plaintiff's counsel claimed that the term household is ambiguous. Counsel claimed that Plaintiff believes as she lives in her brother's home, then her brother is not a member of her household. Additionally, Plaintiff claimed that as the section of the Application requesting "DRIVER INFORMATION" is capitalized, then the attached definition requiring disclosure of all persons age 14 or older residing with Applicant is invalid. Further, Counsel claimed that as Plaintiff believed her brother would never drive the vehicle, then Defendant cannot expect Plaintiff to disclose her brother in a section titled "DRIVER INFORMATION. Rather, Defendant should have provided an additional section for non-drivers. Plaintiff provided no testimony in support of said claims.

The Court again reviewed the application, and found the section titled "DRIVER INFORMATION" unambiguously required disclosure of her brother. The Court found that as the section at issue did not use the word household, then this could not support an allegation of ambiguity. The Court also was not persuaded that titling the section "DRIVER INFORMATION" invalidated the attached definition, nor that the insurer needed an additional section, as Plaintiff's brother fell within the provided definition, as a person aged 14 or older residing with Applicant.

Plaintiff's Claims that Defendant lacked Admissible Evidence to Support the Claim that the Alleged Misrepresentation was Material

Additionally, Plaintiff claimed that Defendant failed to provide admissible evidence of the materiality of the alleged misrepresentation. Plaintiff claimed that Defendant was required to provide an affidavit in support of Defendant's claims, therefore, Defendant failed to provide the requisite admissible evidence when Defendant relied upon Plaintiff's deposition of Defendant's Corporate Representative that Plaintiff filed, to establish the materiality of the misrepresentation. Furthermore, that the Corporate Representative lacked the requisite personal knowledge to testify on the issue, because the Corporate Representative could not explain the programming of the computer system that provided the quotation, that established the materiality of the misrepresentation. Additionally, the Deponent lacked the requisite personal knowledge because the Deponent did not write the underwriter's guidelines, was not an underwriter, and was not the person who entered the information into the system to establish the premium increase.

The Court found that deposition testimony is admissible evidence sufficient to support a motion for summary judgment. The Court also found that the Deponent, Ms. Lisa Robison, satisfied the requirements of the business records exception, as head of the department that provided the rate increases, therefore generating quotations fell within her job duties, and she demonstrated sufficient familiarity with the practices of the department, namely how the quote is generated, and the AS400 system that provided same. The Court reasoned that as an officer who testifies at a DWI case is not required to explain the internal workings of a breathalyzer, similarly, Deponent is not required to demonstrate knowledge of how the computer program and actuarial calculations that provide the quote. Therefore, the Court found that the deposition was admissible evidence in support of the materiality of the misrepresentation, and Deponent satisfied the requirements of the business records exception.

CONCLUSION

Therefore, Plaintiff failed to satisfy its burden to show any error, omission or oversight committed in the first consideration. Consequently:

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** as follows:

Plaintiff's Motion for Reconsideration and/or Rehearing is hereby **DENIED**.

DONE AND ORDERED in Chambers at Hillsborough County, Florida, this _____ of _____, 2020.

Electronically Conformed 7/1/2020

~~Michael C. Bagge-Hernández~~
Honorable Michael C. Bagge-Hernandez

Copies furnished to:

William J Macfarlane, Esq.

Timothy A. Patrick, Esq.